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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1939.

GEORGE A. McBRIDE,
Assignor to the Western Cartridge Co., a Corporation,
Petitioner,

vs.

OLIVER J. TEEPLE,
Assignor to the E. I. du Pont de Nemours & Company,
Respondent.

No. 1007 76

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Customs and Patent Appeals.

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To the United States Court of Customs and Patent Appeals.

To the Honorable The Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, George A. McBride, respectfully prays for writ of certiorari to the United States Court of Customs and Patent Appeals to review the judgment of that Court entered February 26, 1940, Petition for Rehearing denied April 5, 1940.

SUMMARY AND SHORT STATEMENT.

Petitioner and Respondent have been involved in an Interference proceeding in the United States Patent Office with respect to conflicting claims to the subject matter of Respondent's Patent No. 1,924,465.

Petitioner filed his application (R. 13) involved in the Interference proceeding on November 5, 1934; but prior thereto, on November 14, 1930, Petitioner had filed a previous application (now Patent No. 1,955,927) (R. 9), which disclosed the subject matter of Count 1 of the Interference. Subsequent to the filing of Petitioner's first application, but prior to the filing of Petitioner's second application, Respondent filed an application (R. 31) and later another, upon which his Patent No. 1,924,465 (R. 27) issued. Count 1 of the Interference is claim 1 of Respondent's patent (R. 53), and this proceeding is restricted to Count 1.

While the interference concerns the manufacture of propellant powders, it is not necessary for the Court to inquire into the facts except to the extent set forth in the paragraph just preceding.

THE DECISION OF THE COURT BELOW.

The Court below has held that Teeple was entitled to a date no earlier than February 4, 1931 (R. 589-90), for the subject matter of Count 1. On that date Teeple filed an application for patent in which said Count 1 was presented as a claim (R. 35), and to that extent disclosed the subject matter here in issue. The Court further held (R. 584) that the McBride application filed November 14, 1930, disclosed the subject matter of said Count 1, but the Court refused to hold that McBride was the prior inventor of the subject matter of said count. Thus, while the Court says

affirmatively that McBride invented the subject matter before Teeple, it refused to make award of priority to McBride. The Court below held that, notwithstanding the fact that said McBride application filed November 14, 1930, was, when filed and while pending in the Patent Office at the time the Teeple patent issued, a constructive reduction to practice of the subject matter of Count 1, the application has lost that characteristic by virtue of having in the meantime become patented.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

Petitioner believes that writ of certiorari should be granted in this case because the United States Court of Customs and Patent Appeals has failed and refused to follow this Court's decision in Alexander Milburn Company v. Davis-Bournonville Company, 270 U. S. 390.

In the Davis-Bournonville case this Court held that the filing of an allowable application for patent is conclusive evidence that the applicant therefor had completed the disclosed invention as of the date of filing the application and that in determining a question of priority of invention the filing of such an application constitutes a reduction to practice of the subject matter disclosed; but the Court of Customs and Patent Appeals has, by its decision in the instant case, in effect held that such is not the law after the application is laid open to the public by being patented.

Shortly after the decision of this Court in Alexander Milburn v. Davis-Bournonville case, supra, the United States Court of Customs and Patent Appeals, in Conover v. Downs, 35 F. (2) 59, refused to apply the doctrine of the Davis-Bournonville case. Subsequently, as illustrated

by Wiley v. Mears, 75 F. (2) 510, the United States Court of Customs and Patent Appeals apparently recanted, and followed the Davis-Bournonville case by according a patented application full effect as a constructive reduction to practice of the subject matter disclosed by it, as of its filing date. Until the Court of Customs and Patent Appeals rendered its decision in the instant case, Wiley v. Mears, supra, stood as the last expression by that Court upon the subject. In its decision in this case, however, the Court of Customs and Patent Appeals has overruled Wiley v. Mears, and reverted back to Conover v. Downs; which, as aforesaid, is in direct conflict with this Court's decision in Alexander Milburn v. Davis-Bournonville.

The decision of the United States Court of Customs and Patent Appeals is in direct conflict upon this important question of patent law with the decisions of other inferior Federal Courts in interference cases: Harper v. Zimmermann, 41 F. (2) 261, D. C. D. Delaware; Cleveland Trust Company v. Thomas, 1 F. Supp. 917; and in direct conflict with a host of decisions by other Federal Courts in cases involving the same question—priority of invention.

PUBLIC INTEREST.

The apparent independence of the Court of Customs and Patent Appeals and its disposition to depart from or disregard the established law is a matter of great public interest and concern.

PRAYER.

Wherefore, your Petitioner respectfully prays that writ of certiorari be issued to the United States Court of Customs and Patent Appeals, to the end that the questions herein presented with respect to Count 1 may be reviewed

and determined by this Court; and that the judgment of the Court of Customs and Patent Appeals be modified so as to award priority to Petitioner with respect to Count 1.

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